

This listing of claims replaces all prior versions and listings of claims in the application:

**Listing of Claims:**

1. (Currently amended) An isolated nucleic acid having at least 90% 95% sequence identity to the nucleotide sequence set forth in SEQ ID NO:1, wherein said nucleic acid is capable of promoting expression of an operably linked heterologous nucleic acid in a plant cell.
2. (Canceled)
3. (Previously presented) A nucleic acid construct comprising the nucleic acid of claim 1 operably linked to a heterologous nucleic acid.
4. (Original) A transgenic plant cell containing the nucleic acid construct of claim 3.
5. (Original) A transgenic plant containing the nucleic acid construct of claim 3.
6. (Original) A method of making a transgenic plant cell, comprising:  
introducing the nucleic acid construct of claim 3 into a plant cell; and  
selecting a plant cell that contains said nucleic acid construct.
7. (Original) A method of making a transgenic plant, comprising introducing the nucleic acid construct of claim 3 into a plant.
8. – 9. (Canceled)
10. (Original) The isolated nucleic acid of claim 1, wherein said nucleic acid is SEQ ID NO:1.

11. - 20. (Canceled)

21. (Currently amended) The isolated nucleic acid of claim [[9]] 1, wherein said nucleic acid has 98% or greater sequence identity to the nucleotide sequence set forth in SEQ ID NO:1.

22. - 25. (Canceled)

26. (Previously presented) An isolated nucleic acid comprising a fragment of SEQ ID NO: 1 at least 500 nucleotides in length, wherein said nucleic acid is capable of promoting expression in a plant cell of an operably linked heterologous nucleic acid.

27. (Previously presented) The isolated nucleic acid of claim 26, wherein said fragment is at least 1000 nucleotides in length.

28. (Previously presented) The isolated nucleic acid of claim 27, wherein said fragment is at least 2000 nucleotides in length.

29. (New) An isolated nucleic acid having a nucleotide sequence selected from the group consisting of a) the nucleotide sequence set forth in SEQ ID NO:1 and b) a fragment of the nucleotide sequence of a) that is at least 500 nucleotides in length and capable of promoting expression of an operably linked heterologous nucleic acid in a plant cell.